

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

RAYMOND L. BRUTON,	)	
	)	
Plaintiff,	)	C.A. No.: 06-736- SLR
	)	
v.	)	
	)	
DIRECTOR JAY SYLVESTER, et al.	)	TRIAL BY JURY
	)	OF SIX DEMANDED
Defendant.	)	

**DEFENDANT JAY SYLVESTER'S  
MOTION TO DISMISS PURSUANT TO F.R.C.P. 12(b)(6)**

Defendant, Jay Sylvester, by and through his undersigned counsel hereby files this Motion to Dismiss and in support thereof avers as follows:

1. Pro Se inmate Plaintiff Bruton filed the instant complaint on December 4, 2006 setting forth claims of purported violations of his civil rights while incarcerated at the Howard R. Young Correctional Institution. A true and correct copy of Plaintiff's Complaint is attached hereto marked Exhibit "A".

2. Following the Court's review of Plaintiff's Complaint, on April 11, 2007, the Court issued a Memorandum Order dismissing all claims against all defendants, except Jay Sylvester, the Moving Defendant herein.

3. A review of Plaintiff's Complaint appears to make claims against Defendant Sylvester, the Director of the Key Program, but only referencing Mr. Sylvester once in his Complaint – for the proposition that Mr. Sylvester 'blamed' the Department of Corrections for the exercise schedule. Even taking a liberal view of the pro se complaint, there does not appear to be any other specific allegations against Mr. Sylvester. See, Complaint as Exhibit

“A”.

4. As interpreted by Defendants, Plaintiff appears to make claims for purported violations of his Eighth and Fourteenth Amendment Rights. See, Complaint as Exhibit “A”.

5. Plaintiff’s alleged claims for purported violations of his Eighth Amendment Rights stem from a lack of exercise, leading to adverse effects upon his health and medical condition. Accordingly, Defendant will address both the purported lack of exercise and deliberate indifference to his medical needs.

6. Based upon the facts as alleged in Plaintiff’s Complaint, his claims are insufficient to support an Eighth Amendment Violation for lack of exercise, and therefore, his claims should be dismissed, as a matter of law.

7. Based upon the facts as alleged in Plaintiff’s Complaint, his claims are insufficient to support an Eighth Amendment Violation for deliberate indifference to medical needs, and therefore, his claims should be dismissed, as a matter of law.

8. Plaintiff has failed to set forth sufficient facts to support purported violations of his Fourteenth Amendment Rights, for either a substantive or procedural due process claim. Accordingly, Plaintiff’s claims should be dismissed, as matter of law.

9. In order to bring a claim for purported civil rights violations, a prisoner must first exhaust all administrative remedies, including appeals thereof, before bringing a claim.

10. Plaintiff failed to exhaust his administrative remedies, and therefore, his claims must be dismissed, as a matter of law.

11. Plaintiff’s claims against Defendant Sylvester in his supervisory capacity fail, as a matter of law.

WHEREFORE, Defendant Jay Sylvester requests that Plaintiff's Complaint be dismissed, as a matter of law.

Reger Rizzo Kavulich & Darnall LLP

By: /s/ Rochelle Libid Gumapac  
Rochelle Libid Gumapac, Esquire  
Bar I.D. No. 4866  
Suite 202  
1001 Jefferson Street  
Wilmington, DE 19801  
(302) 652-3611 (phone)  
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[rgumapac@rrkdlaw.com](mailto:rgumapac@rrkdlaw.com)  
Attorneys for Defendant,  
Jay Sylvester

Dated: June 15, 2007

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF DELAWARE**

RAYMOND L. BRUTON,	)	
	)	
Plaintiff,	)	C.A. No.: 06-736- SLR
	)	
v.	)	
	)	
DIRECTOR JAY SYLVESTER, et al.	)	TRIAL BY JURY
	)	OF SIX DEMANDED
Defendant.	)	

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2007, upon consideration of Defendant Sylvester's Motion to Dismiss and Plaintiff's response thereto, if any, it is hereby ORDERED and DECREED that said Motion is GRANTED and Plaintiff's Complaint is dismissed, with prejudice.

By The Court:

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J.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

RAYMOND L. BRUTON, )  
Plaintiff, ) C.A. No.: 06-736- SLR  
v. )  
DIRECTOR JAY SYLVESTER, et al. ) TRIAL BY JURY  
Defendant. ) OF SIX DEMANDED

**CERTIFICATE OF SERVICE**

I, Rochelle Gumapac, Esquire hereby certify that on the 15th day of June 2007 a true and correct copy of Defendant Sylvester's Motion to Dismiss was electronically filed and served via first class mail, postage prepaid, upon:

Raymond L. Bruton  
SBI #069025  
Unit 2-Q-21  
H.R.Y.C.I.  
PO Box 9561  
Wilmington, DE 19809

Reger Rizzo Kavulich & Darnall LLP

By: /s/ Rochelle Libid Gumapac  
Rochelle Libid Gumapac, Esquire  
Bar I.D. No. 4866  
Suite 202  
1001 Jefferson Street  
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(302) 652-3611 (phone)  
(302) 652-3620 (fax)  
[rgumapac@rrkdlaw.com](mailto:rgumapac@rrkdlaw.com)  
Attorneys for Defendant  
Jay Sylvester

## **EXHIBIT "A"**

(Rev. 5/05)

**FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT  
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §1983**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

(1) Raymond L. Bruton, SBI#069025  
 (Name of Plaintiff) (Inmate Number)

H.R.Y.C.I., P.O. Box 9561, WILM. DE  
 (Complete Address with zip code)

06-736

(2) \_\_\_\_\_  
 (Name of Plaintiff) (Inmate Number)

(Case Number)

(to be assigned by U.S. District Court)

(Complete Address with zip code)

(Each named party must be listed, and all names  
must be printed or typed. Use additional sheets if needed)

vs.

(1) Russel D. Buskirk

(2) CivGenics

(3) CSM Medical Division  
 (Names of Defendants)

(Each named party must be listed, and all names  
must be printed or typed. Use additional sheets if needed)

**CIVIL COMPLAINT**

Jury Trial Requested  
 X

DEC 04 2006

**I. PREVIOUS LAWSUITS**

A. If you have filed any other lawsuits in federal court while a prisoner, please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned:

Civ. NO 00ev-01032, JJF, 2000, December

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Addictional Defendants

Director Jay Sylvester  
CiviGenics Key Program (N)  
H.R.Y.C.I.  
PO Box 9561  
Wilmington, DE 19809

Warden Raphael Williams  
H.R.Y.C.I., POBox 9561  
Wilmington, DE 19809

Mr. Stanely W. Taylor Jr.  
Commissioner of Prison  
245 McKee Road  
Dover, DE 19904

**II. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

In order to proceed in federal court, you must fully exhaust any available administrative remedies as to each ground on which you request action.

A. Is there a prisoner grievance procedure available at your present institution?  Yes  No

B. Have you fully exhausted your available administrative remedies regarding each of your present claims?  Yes  No

C. If your answer to "B" is Yes:

1. What steps did you take? I talk to my Counselors in the Key Program, wrote Grievances to Sgt. Moody,
2. What was the result? Nothing was done by anyone:

D. If your answer to "B" is No, explain why not:

**III. DEFENDANTS (in order listed on the caption)**

(1) Name of first defendant: Russel D. Buskirk  
 Employed as CSMigenics- DE State Office  
 Mailing address with zip code: 300 Water Street, Dover DE, 19904

(2) Name of second defendant: James Inciadi,  
 Employed as CSM Medical Division at University of Delaware  
 Mailing address with zip code: H.R.Y.C.I., P.O. Box 9561, Wilm. DE 19809

(3) Name of third defendant: Warden Rafael Williams  
 Employed as Warden at H.R.Y.C.I., P.O. Box 95  
 Mailing address with zip code: 61, Wilmington, DE 19809

(List any additional defendants, their employment, and addresses with zip codes, on extra sheets if necessary)

**IV. STATEMENT OF CLAIM**

(State as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach no more than three extra sheets of paper if necessary.)

1. SEE Attach Statement of Facts:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. SEE Attached Statement of Facts:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. SEE Attached Statement of Facts:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**V. RELIEF**

(State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.)

1. Plaintiff respectfully request of the Court to be compensated and request punitive damages against the defendants for their willful violation of Plaintiff rights to have exercise and the right to breathe fresh air which denied Petitioners his 14 Amendment and under his Eight Amendment created cruel

Key North Correctional Recovery Program  
Residents Weekly Schedule

Day/Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
0600	Lights ON	Lights ON	Lights ON	Lights ON	Lights ON	Lights ON	Lights ON
0630	Breakfast	Breakfast	Breakfast	Breakfast	Breakfast	Breakfast	Breakfast
0700	Count	Count	Count	Count	Count	Count	Count
0740	Shower & Shave	Shower & Shave	Shower & Shave	Shower & Shave	Shower & Shave	Shower & Shave	Shower & Shave
0800	Count	Count	Count	Count	Count	Count	Count
0830	Education	Education	Education	Education	Education	Education	Education
0830 - 0900	Inspection	Inspection	Inspection	Inspection	Inspection	AM Meeting	AM Meeting
	AM Meeting	AM Meeting	AM Meeting	AM Meeting	AM Meeting	AM Meeting	AM Meeting
0900-1100	House I & II Committees	House II	House I	House I & II	All Phases	House I & II Phase I only	House I & II Individual Counseling
Session I	All Phases	All Phases	All Phases	All Phases	Recreation	Seminar	
	Peer Awareness	Peer Awareness	Peer Awareness	Peer Awareness	Recovery Activities		
	Testing for Phase Movement	House I Commissary	House II Commissary	House II	Committee		
1130	Count	Count	Count	Count	Count	Count	Count
1200	Lunch	Lunch	Lunch	Lunch	Lunch	Lunch	Lunch
1300-1430	House I & II All Phases	House II All Phases	House I & II All Phases	House I All Phases	House I & II All Phases	House I & II Phase I only	Recovery Activities
Session II	Self Discovery	Self Discovery	Self Discovery	Self Discovery	Learn to Deal	Intro to 12 Steps	Journaling
1500 & 1600	Count	Count	Count	Count	Count	Count	Count
1615	Dinner	Dinner	Dinner	Dinner	Dinner	Dinner	Dinner
1700-1730	Committee Meeting	Individual Counseling	Committee Meeting	Individual Counseling	Committee Meeting	Individual Counseling	Individual Counseling
1730-1830	Individual Counseling	House I & II AA/NA	House I & II AA/NA	House I & II Phase III - RePac	House II only AA/NA	House I only AA/NA	House I & II AA/NA
1800-1930					House I Recreation	House II Recreation	
2000-2030	PM Meeting	PM Meeting	PM Meeting	PM Meeting	PM Meeting	PM Meeting	PM Meeting
2300	Lights OFF	Lights OFF	Lights OFF	Lights OFF	Lights OFF	Lights OFF	Lights OFF

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2. and unusual punishment by not affording Petitioner his right to breath good clean air and exercise,

3. And finally, defendants denied Plaintiff in the Key Program North, of life, liberty or property, without due process of law, and denied Plaintiff within its jurisdiction the equal protection of the law.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 28 day of November, 2006.

Raymond L. Breton  
(Signature of Plaintiff 1)

(Signature of Plaintiff 1)

(Signature of Plaintiff 2)

(Signature of Plaintiff 3)

STATEMENT OF FACTS

On August 30, 2005, Petitioner sign a contract to follow the rules and regulation of the Key(n) Program, upon Petitioners daily schedule, no rules of recreation were included in the normal routine of morning and afternoon classes that we as residents faithfully had to attend.

Petitioner has a history of chronic High Blood Pressure. Petitioner take High Blood pressure medicine daily. Petitioner has also been diagnose for diabetes# 2 and Petitioner takes diabetes medicine twice a day.

Because Petitioner was not allowed outside for fresh air on a daily basis nor allowed to go to the gym for exercise on a daily basis, petitioner's health suffered. Petitioner graduated the Key Program (N). Petitioner was in the Key (N) Program from August 30 2005, until May 26, 2006. Petitioner actually left the Key (N) Program on July 8, 2006. During that entire period, Petitioner was allowed to go to the exercise yard around (7) to (8) times in the Key(N) Program. Furthermore, Petitioner was allowed to the Gym no more than 10 times during his stay in the Key(N) Program.

Petitioner complain to everyone, Petitioner wrote grievances and petition the Key(N) Program's staff. However, no body would allow the Key Residents to exercise outside in the exercise yard or go to the gym on a normal day to day, 1 hour recreation schedule as petitioner should have had because of Petitioners chronic sickness. Exercise is an important part of Chronic illness, 1/ half hour of walking a day, the doctors orders, Petitioner to do. The only walking Petitioner was allowed to do was walking to the groups in the Key arena and back to Petitioners bunk in the Dorm# 1 an Dorm# 2 area, when Petitioner was moved for their own personal reason.

The Dorm# 1 and Dorm# 2 were totally without any air from the outside. The windows were closed up no one could get a good direct view from outside an no sunshine what so ever. We were not allowed to have a radio and the TV we had was taken so often, you got use to not viewing a TV at all.

The eleven months Petitioner was living in the Key(N) Dorm#1 and Dorm#2 were eleven of the worst months in Petitioner's life. Petitioners medicine was increased because of the lack of exercise. Petitioners body suffered with weight gain which is not good for a chronic patient to have because of the lack of exercise.

The Key(N) Program Director blame DOC for the lack of exercise provided to the Dorm#1 and Dorm#2, Director Jay Sylvester explain

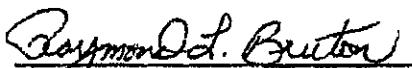
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that DOC controlled the daily exercise which the residents were allow to have; And we had to live with it on the conditions. Never fully understanding whether DOC was at fault for the none commitment to exercise or was it the civil Genics Program for their lack of care in providing leadership which would have concern itself with the Key(N) problem of no exercise outside or in the Gym during the period of August 30, 2005, to July 8, 2006.



Raymond L. Bruton  
Raymond L. Bruton  
SBI# 069025 Unit 2-Q-21  
H.R.Y.C.I., POBox 9561  
Wilmington, DE 19809

Date: November 28, 2006

STATE OF DELAWARE  
 DEPARTMENT OF CORRECTION  
 HOWARD R. YOUNG CORRECTIONAL INSTITUTION  
 OFFICE OF THE GRIEVANCE CHAIRPERSON  
 1301 E. 12<sup>TH</sup> STREET  
 WILMINGTON, DE 19801

## MEMORANDUM

TO: Inmate Raymond Braxton Class I

FROM: Sgt. Moody, Inmate Grievance Chairperson

DATE: 2-27-00

RE: YOUR RECENT GRIEVANCE #06-23706 gmp

This memo is to inform you that the grievance submitted by you dated 2-26-00, regarding outside recreation is not grievable for the following reason(s):

The complaint was addressed by the IGC: \_\_\_\_\_

Security issue (involves the security and/or staffing of the Institution and/or the safety, health, and/or welfare of inmates, staff and the public).

Classification issues (security classification, jobs, transfers, programs, housing unit assignment). Classification has its own appeal process. The inmate must write to the Treatment/Classification Unit within seven (7) days after the inmate receives the Classification decision. The letter must state that the inmate is appealing the classification and clearly indicate the reasons the inmate disagrees with the classification decision.

Disciplinary issue. Disciplinary actions cannot be grieved but must be APPEALED within 24 hours of the Class I or Class II Hearing Decision. Complete an appeal form and mail it to the facility Hearing Officer within 24 hours of receiving the form. Please note that 24 loss of all privileges cannot be appealed.

Parole Board Decision. The inmate must write a letter to the Parole Board within 30 days of the Board's decision. Expressing the desire to appeal the decision and listing the reasons. The Parole Board's address is: Board of Parole, Carvel State Office Building, 820 N. French Street, 5<sup>th</sup> Floor, Wilmington, DE 19801.

Inmates cannot request or demand disciplinary action on staff. If you have a complaint regarding staff write a letter to that person's supervisor. In this case, that is: \_\_\_\_\_

This is an issue/complaint that has already been grieved by you or another inmate. 2-23-04

Grievance is unacceptable because it has passed the seven (7) day time frame allotted to file a grievance.

The grievance is a photocopy, carbon copy, written in pencil or red ink. Original grievance forms must be written in black or dark blue ink.

This complaint is addressed in the Inmate Handbook. Refer to the handbook page \_\_\_\_\_ for clarification and/or direction.

- Action request is inappropriate or not completed. Inmate must make an actual request, such as, request that an investigation be conducted (inmates are not forwarded results of investigations that involve staff conduct).
- Documentation must be attached to the grievance when it is resubmitted that supports allegations/complaint, such as commissary receipts, Form 537, etc. The IGC will make copies of items submitted with the grievance and return the originals to the inmate.
- This complaint should be addressed by submitting a sick call slip. If you are experiencing any type medical condition, please submit a sick call slip.
- Other: Requests are not processed through the grievance procedure.
- Other: Please be advised that you have submitted your grievance on the wrong form. Please re-submit using the correct grievance form.

cc: file